

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

IRVING D. CURTIS, JR.

Claimant

VS.

USD #501

Respondent,
Self-Insured

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Docket No. 255,791

ORDER

Respondent appealed the October 19, 2000 preliminary hearing Order entered by Administrative Law Judge Brad E. Avery.

ISSUES

This is a claim for an April 13, 2000 accident and resulting injury to claimant's back and right knee. After conducting a preliminary hearing on October 10, 2000, Judge Avery awarded claimant both medical benefits and temporary total disability benefits.

Respondent contends Judge Avery erred. Respondent argues that claimant failed to prove that he injured himself while working for respondent and that he failed to prove that he was temporarily and totally disabled.

Conversely, claimant contends that the preliminary hearing Order should be affirmed. Claimant argues that he has proven that he aggravated and injured his back and right knee when he fell while working for respondent. Claimant also argues that the Appeals Board does not have jurisdiction from a preliminary hearing order to determine whether a worker satisfies the definition of being temporarily and totally disabled.

The issues now before the Board on this review are:

1. Did claimant sustain personal injury by accident arising out of and in the course of employment with respondent?
2. Does the Board have jurisdiction from a preliminary hearing order to reweigh the evidence and determine whether claimant satisfies the definition of being temporarily and totally disabled?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The preliminary hearing Order should be affirmed.
2. The Board affirms the Judge's finding and conclusion that claimant sustained personal injury by accident arising out of and in the course of employment with respondent. Claimant's testimony about falling and injuring himself while working for respondent on April 13, 2000, is credible and persuasive. Further, the contemporaneous medical records overwhelmingly support claimant's allegations that he fell and injured himself as alleged.
3. Respondent argues that claimant failed to prove that his injuries arose out of and in the course of employment as "(a) . . . claimant had prior health problems and degenerative arthritis in his right knee and (b) claimant was already classified as 'totally disabled' by the Social Security Administration." The Board disagrees with respondent's analysis.

An injury is compensable under the Workers Compensation Act even where the accident only serves to aggravate a preexisting condition.¹ The test is not whether the accident causes the condition, but whether the accident aggravates or accelerates it.²

4. The Board's review of preliminary hearing orders is limited. Not every alleged error in law or fact in making preliminary hearing findings is subject to review. Unless an administrative law judge otherwise exceeds his or her jurisdiction, reviews of preliminary hearing orders are generally limited to the following issues:³

- A. Did the worker sustain an accidental injury?
- B. Did the accidental injury arise out of and in the course of employment?
- C. Did the worker provide both timely notice and timely written claim?
- D. Is there any defense to the compensability of the claim?

¹ Odell v. Unified School District, 206 Kan. 752, 481 P.2d 974 (1971).

² Woodward v. Beech Aircraft Corp., 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

³ See K.S.A. 1999 Supp. 44-534a and K.S.A. 1999 Supp. 44-551.

Whether claimant is or is not temporarily totally disabled is not one of the preliminary hearing findings subject to review from a preliminary hearing order. Therefore, the Judge's decision on that issue is not subject to review at this stage of the proceedings.

5. As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim. K.S.A. 1999 Supp. 44-534a reads, in part:

. . . Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.⁴

6. Because claimant has proven that he sustained personal injury by accident arising out of and in the course of employment with respondent, he is entitled to receive workers compensation benefits for his back and right knee.

WHEREFORE, the Appeals Board affirms the October 19, 2000 preliminary hearing Order entered by Judge Avery.

IT IS SO ORDERED.

Dated this ____ day of December 2000.

BOARD MEMBER

c: Beth Regier Foerster, Topeka, KS
Gregory J. Bien, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director

⁴ K.S.A. 1999 Supp. 44-534a(a)(2).